UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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DISTRICT OF NEW MEXICO
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TERRENCE C. TYLER,

Plaintiff,

vs. **No.**

BOARD OF REGENTS, EASTERN NEW MEXICO UNIVERSITY, EVERETT FROST, Individually and as President, MARSHAL STINNETT, Individually and as Member of the Board of Regents, GARY MUSGRAVE, Individually and as Vice-President of Student Affairs, ROSEMARIE STALLMAN, Individually and as Athletic Director.

JURY DEMAND

CIV 00 1504

COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff, Terrence C. Tyler, hereinafter referred to as "Terry Tyler", by and through his attorney of record, J. Edward Hollington, J. Edward Hollington & Associates, P.A., and states for his complaint against the Defendants as follows:

I. JURISDICTION AND PARTIES

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343, and 42 U.S.C. §§ 1981, 1985, 1988 and 2000(e) *et seq.*

2. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b).

3. Plaintiff, Terry Tyler is a resident of Albuquerque, Bernalillo County, New Mexico.

4. Defendant Eastern New Mexico University, hereinafter "ENMU", is a state university created pursuant to Section XII of the Constitution of New Mexico and NMSA 1978, § 21-3-29 [1953].

5. Defendant ENMU is governed by a Board of Regents pursuant to NMSA 1978, §

21-3-30 [1953].

6. ENMU is located in Portales, New Mexico.

7. Defendant Everett Frost at all times material to this action was President of ENMU.

8. Defendant Marshal Stinnett at all times material to this action was a member of the Board of Regents for ENMU.

9. Defendant Gary Musgrave, during all times material to this action, was Vice-President of Student Affairs for ENMU.

10. Defendant Rosemarie Stallman during all times material to this action was the Athletic Director for ENMU.

11. Defendant ENMU is an employer and is a person engaged in an industry affecting commerce which has fifteen (15) or more employees for each working day for twenty (20) or more calendar weeks in the current or preceding calendar year pursuant to 42 U.S.C. § 2000(e)(b).

12. Plaintiff, Terry Tyler is an African-American, and as such is a member of a recognized protected group pursuant to Title VII of the 1964 Civil Rights Act as amended in 1991.

II. STATEMENT OF FACTS

13. Terry Tyler was employed pursuant to a written contract, as Head Men's Basketball Coach of ENMU on July 1, 1998.

14. Terry Tyler played professional basketball from 1978 through 1992 with several National Basketball Association [NBA] teams, including the Detroit Pistons, Sacramento Kings and the Dallas Mavericks. At the time he was hired by ENMU, he had served as an Assistant Basketball Coach at the University of Notre Dame for approximately three (3) years.

15. Terry Tyler was excited about the head basketball coach position at ENMU. He looked forward to using his skills and experience as an NCAA All-American outstanding collegiate player, NBA player, and an assistant coach with a successful Big East conference team to help ENMU turn its program around.

16. ENMU Men's Basketball Program had experienced several losing seasons prior to Terry Tyler's employment as head coach.

17. Defendant Rosemarie Stallman, as Athletic Director was Terry Tyler's immediate supervisor. Rosemarie Stallman is an Anglo female.

18. Defendants Everett Frost, Marshal Stinnett, and Gary Musgrave are all Anglo males.

19. At the time Terry Tyler was hired as the new Head Men's Basketball Coach, the Defendants knew and understood that it would take three (3) to five (5) years to turn the Men's Basketball Program into a winning team.

20. Recruitment of players is a critical part of rebuilding a men's basketball program.

21. When Terry Tyler assumed his position as Head Men's Basketball Coach in July of 1998, most of the recruitment of players had been accomplished under the direction of the former basketball coach.

22. Terry Tyler is married to Ms. Sara Tyler, an Anglo female.

23. Shortly before Terry Tyler was hired as Head Men's Basketball Coach, Defendant Rosemarie Stallman, told him that "he should expect problems from the community because of his marriage to a white woman".

24. In November, 1998, Terry Tyler terminated the assistant coach and graduate assistant, who had been part of the prior coach's staff at ENMU. Defendant Rosemarie Stallman assured him that an assistant coach would be hired for the Men's Basketball Program in February or March, 1999.

25. Defendants Rosemarie Stallman and Everett Frost did not provide an assistant coach for Terry Tyler until August of 1999.

26. The recruitment of new players begins in May of each year.

27. Terry Tyler had repeatedly requested the Defendants to authorize hiring of an assistant coach and Terry Tyler interviewed an assistant coach and recommended him to Defendant Rosemarie Stallman in March of 1999.

28. Terry Tyler explained to Defendant Rosemarie Stallman that he urgently needed an assistant coach so he could effectively recruit for the next 1999/2000 basketball season. Terry Tyler was unable to effectively recruit between May and August of 1999, because the Defendants would not provide him an assistant coach. All other head coaches of major sports departments of ENMU were provided assistant coaches.

29. In 1999, Terry Tyler requested permission to hire a graduate assistant to assist him in carrying out his job duties and functions as head basketball coach.

30. Terry Tyler recommended Ms. Carmen Alexander, an African-American female, for the graduate assistant position.

31. Defendant Rosemarie Stallman refused to allow Carmen Alexander to work as a graduate assistant for Terry Tyler.

32. All other coaches of major sports departments of ENMU were provided graduate assistants.

33. No disciplinary action was ever taken against Terry Tyler during his employment with ENMU.

34. While Terry Tyler was employed as Head Men's Basketball Coach, he and his wife experienced overt racism, examples of which included: obscene telephone calls made to his wife calling her a "nigger lover", vandalism of their home and property, including broken windows, several attempts to break into their home, and statements made to Terry Tyler that he was being treated differently because he is black and married to a white person.

35. Terry Tyler and his wife reported the threats and trespassers on their property to ENMU Campus Police. It was learned that one white male was responsible for one of the obscene telephone calls of racial epitaths, and he was an ENMU employee. The employee was terminated, but later rehired by ENMU.

36. The Men's Basketball Team experienced a losing season for the 1999 basketball season.

37. The standard time for turning a losing team into a winning team in collegiate basketball is three (3) to five (5) years.

38. Terry Tyler expressed concerns about discriminatory actions against he and his wife to Chris Mullins, the Human Resources Director and he sought counseling from the

university psychologists from November, 1998 through June, 2000, to deal with the emotional distress caused by discriminatory actions against he and his wife.

39. On February 12, 2000, Defendant Gary Musgrave, told Terry Tyler that he should either resign or be terminated. Defendant Musgrave told Terry Tyler that he was "speaking on behalf of the Board of Regents".

40. On February 15, 2000, Terry Tyler reported to Defendant Rosemarie Stallman the conversation he had just a few days before with Defendant Musgrave. He expressed his concern that he was being forced to resign or be terminated. Defendant Rosemarie Stallman told Terry Tyler that he was a good coach and the fact that he was black was the basis of the efforts to get rid of him.

41. On February 24, 2000, Defendant Rosemarie Stallman, confirmed that Defendants Everett Frost, Marshal Stinnett, and Gary Musgrave intended to terminate Terry Tyler's employment. Defendant Rosemarie Stallman warned Terry Tyler that if he filed any claims against ENMU it would be hard for him to get another coaching job.

42. Defendant Rosemarie Stallman told Terry Tyler that he was being terminated because he was black, married to a white women, and "people around here don't know how to deal with other cultures".

43. At the time Terry Tyler's employment was terminated, his annual salary was $61,133.00, plus benefits.

44. On March 7, 2000, Terry Tyler filed a Charge of Discrimination based on race with the Equal Employment Opportunity Commission as Charge No. 390A00529.

45. The Defendants received notice of Terry Tyler's EEOC charge on or about March 10, 2000.

46. On March 17, 2000, Defendant Rosemarie Stallman, told Terry Tyler his contract as Head Men's Basketball Coach would not be renewed after June 30, 2000. Defendant Rosemarie Stallman, also told Terry Tyler that he was being stripped of his duties and responsibilities as Head Men's Basketball Coach and would be reassigned to another department.

47. On March 21, 2000, Terry Tyler's attorney wrote a letter to Defendant Everett Frost complaining of the retaliatory actions taken against Terry Tyler because he had filed an EEOC charge.

48. On or about April 26, 2000, the Defendants hired a new Men's Head Basketball Coach, Shawn Scanlan, an Anglo male.

49. At all times material to this action, ENMU had five hundred (500) or more employees.

50. Terry Tyler's race was a motivating factor in the decision to fire him.

51. Terry Tyler suffered damages in the form of lost income, including back pay, front pay, compensatory damages including emotional distress, other pecuniary losses to be proven at trial and has experienced mental anguish and humiliation as a result of the Defendants' actions against him.

52. The individual Defendants' conduct constitute willful, wanton, and malicious acts against Terry Tyler, thus entitling Mr. Tyler to seek punitive damages.

53. Terry Tyler received his Notice of Right to Sue on or about September 27, 2000.

III. VIOLATIONS OF TITLE VII CIVIL RIGHTS ACT 42 U.S.C. 2000(e)

54. Plaintiff, Terry Tyler, hereby incorporates all allegations contained in the foregoing paragraphs 1 through 53 as though the same are fully set forth herein.

55. Terry Tyler as an African-American belongs to a racial minority.

56. Terry Tyler was qualified to serve as the Men's Head Basketball Coach at ENMU.

57. The termination of Terry Tyler's contract as Men's Head Basketball Coach constitutes adverse employment action.

58. Terry Tyler was replaced by a non-minority [Anglo male].

59. The Defendants Everett Frost, Marshal Stinnett, Gary Musgrave and Rosemarie Stallman, were members of upper management and final decision makers regarding the termination of Plaintiff's employment.

60. The conduct of the representatives of ENMU constitute intentional discrimination and their actions were done with malice, wanton disregard of Terry Tyler's rights and with intent to cause him harm.

61. Terry Tyler has suffered damages in the form of loss of income, past and future, expenses and costs related to job searches, damages for humiliation, emotional distress, and other pecuniary losses.

62. Plaintiff has incurred attorney fees and costs and is further entitled reimbursement for such fees and costs.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against the Defendants and award him damages to include loss of income, past and future, expenses and costs related to job searches, damages for humiliation, emotional distress, attorney fees and costs, and pre-judgment and post-judgment interest for such other and further relief as the Court deems just and appropriate.

IV. RETALIATION AND VIOLATION OF SECTION 407 OF TITLE VII 42 U.S.C. 2000(e)3(a)

63. Plaintiff, Terry Tyler, hereby incorporates all allegations contained in the foregoing paragraphs 1 through 62 as though the same are fully set forth herein.

64. Plaintiff, Terry Tyler, expressed his concerns to Defendant Rosemarie Stallman in February of 2000, that the attempts to force him to resign were based on his race.

65. Defendant Rosemarie Stallman threatened Terry Tyler that if he filed any claims against ENMU, he would find it difficult to get a job as another coach.

66. Terry Tyler's acts of filing a Charge of Discrimination with the Equal Employment Opportunity Commission is protected activity under Title VII of the Civil Rights Act.

67. The Defendants terminated Terry Tyler's employment as a result of his complaints of racial discrimination and his action of filing an EEOC charge of discrimination.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against the Defendants and award him damages to include loss of income, past and future, expenses and costs related to job searches, damages for humiliation, emotional distress, attorney fees and costs, and pre-judgment and post-judgment interest for such other and further relief as the Court deems just and appropriate.

V. VIOLATION OF 42 U.S.C. § 1981

68. Plaintiff, Terry Tyler, hereby incorporates all allegations contained in the foregoing paragraphs 1 through 67 as though the same are fully set forth herein.

69. Race was a motivating factor in the Defendants Stinnett, Frost, Stallman and Musgrave's decision to fire Terry Tyler.

70. Terry Tyler's employment terminated on June 30, 2000 with ENMU.

71. The actions of Defendants Stinnett, Frost, Musgrave and Stallman constitute intentional discrimination based on Terry Tyler's race. As a result of Defendants' intentional discrimination against Terry Tyler, he has suffered loss of income, past and future, expenses and costs related to job searches, damages for humiliation, and emotional distress.

72. The acts of Defendants Stinnett, Frost, Musgrave and Stallman amounts to wanton, willful and malicious conduct and Plaintiff is further entitled to punitive damages.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against the Defendants and award him damages to include loss of income, past and future, expenses and costs related to job searches, damages for humiliation, emotional distress, punitive damages, attorney fees and costs, and pre-judgment and post-judgment interest for such other and further relief as the Court deems just and appropriate.

VI. CONSPIRACY § 1985

73. Plaintiff, Terry Tyler, hereby incorporates all allegations contained in the foregoing paragraphs 1 through 72 as though the same are fully set forth herein.

74. Defendants Stinnett, Frost, Musgrave and Stallman, combined and conspired to terminate the employment of Terry Tyler because of his race.

75. The Defendants Stinnett, Frost, Musgrave and Stallman, conspired for the purpose of depriving Terry Tyler of equal protection, equal privileges and immunities under the laws.

76. The individual Defendants acted in concert to fire Terry Tyler because of his race.

77. Terry Tyler suffered damages including loss of income, past and future, expenses and costs related to job searches, damages for humiliation, emotional distress, and punitive damages.

78. Defendants Stinnett's, Frost's, Musgrave's and Stallman's actions against Plaintiff was intentional and done with malice that entitles Plaintiff to punitive damages.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment against the Defendants and award him damages to include loss of income, past and future, expenses and costs related to job searches, other pecuniary damages, damages for humiliation, emotional distress, punitive damages, attorney fees and costs, and pre-judgment and post-judgment interest for such other and further relief as the Court deems just and appropriate.

Respectfully submitted:

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